

**Case No. 18-20533**

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**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

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**UNITED STATES OF AMERICA**

**v.**

**MICHAEL HINDS**

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**DEFENDANT'S MOTION AND BRIEF FOR RECONSIDERATION OF  
THIS COURT'S ORDER (RE 38) DENYING DEFENDANT'S MOTION TO  
SUPPRESS**

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## **TABLE OF CONTENTS**

TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES.....	i
INTRODUCTION.....	1
ARGUMENT:	
I.    “Clear and Uncontroverted” evidence of MMMA compliance could preclude a finding of probable cause based on marijuana possession .....	5
CONCLUSION .....	6
CERTIFICATE OF SERVICE.....	7

## **TABLE OF AUTHORITIES**

### **STATUTES**

Fed. R. Civ. P. 59(e).....	1
----------------------------	---

### **COURT RULES**

Local Court Rule (E.D. MI) 7.1(h).....	1
--	---

### **CASES**

United States v. Duval, 742 F.3d 246, 252 (6th Cir. 2014) .....	5
<i>People v. Brown</i> , 297 Mich. App. 670, 825 N.W.2d 91 (Mich. Ct. App. 2012) .....	5

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

CRIMINAL NO. 18-cr-20533

v.

HONORABLE VICTORIA A. ROBERTS

MICHAEL HINDS

Defendant.

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**DEFENDANT'S MOTION AND BRIEF FOR RECONSIDERATION OF  
THIS COURT'S ORDER (RE 38) DENYING DEFENDANT'S MOTION TO  
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The Defendant moves this Honorable Court, under Fed. R. Civ. P. 59(e) and E.D. Mich. LR 7.1(h) to reconsider its Opinion and Order (RE 38) denying his motion to suppress illegally sized evidence for the reasons in the following brief:

1). On November 23, 2017, Mr. Hinds was arrested in the City of Detroit for allegedly being in possession of illegal narcotics and a firearm in the City of Detroit. Mr. Hinds was processed at the Detroit PD.

- 2). Mr. Hinds prior to being arrested on November 23, 2019, came in contact with Detroit Police Offices Harnphanich and Bush.
- 3). The reason Detroit Police Offices Harnphanich and Buch came into contact with Mr. Hinds is because the officers noticed his vehicle was filled with smoke.
- 4) The Detroit Police Offices were investigating whether the occupants were illegally smoking marihuana in public.
- 5) During their investigation the officers determined that the smoke in Mr. Hinds vehicle was tobacco smoke and not marihuana smoke.
- 6) That Mr. Hinds had a license to use medical marihuana.
- 7). That Mr. Hinds was in possession of less than 2.5 ounces of marihuana.
- 8). That the DPD officers observed Mr. Hinds in possession of less than 5 grams of marihuana.
9. That the DPD offices did not observe or smell any burnt marihuana in Mr. Hinds' vehicle.
- 10). From the DPD offices initial observations there was no evidence that Mr. Hinds was not in "clear and uncontroverted" compliance with the Michigan Medical Marihuana Act (MMMA.)
- 11) The Michigan Medical Marijuana Act (MMMAA) does provide a very restricted limited exception to that general rule of a finding of probable cause for

the possession of marijuana, but there has to be “clear and uncontroverted” compliance with the Act.

12) There is no indication by the court in its order (RE 38) of whether or not Mr. Hinds was in “clear and uncontroverted” compliance with the MMMA.

13) If it was determined that Mr. Hinds was in “clear and uncontroverted” compliance with the MMMA, probable cause could be precluded.

For the above reasons, counsel for Mr. Hinds requests that the Court reconsider in order (RE: 38) denying his motion to suppress.

Dated: January 13, 2020,

Respectfully submitted

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

CRIMINAL NO. 18-cr-20533

v.

HONORABLE VICTORIA A. ROBERTS

MICHAEL HINDS

Defendant.

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**DEFENDANT'S MOTION AND BRIEF FOR RECONSIDERATION OF  
THIS COURT'S ORDER (RE 38) DENYING DEFENDANT'S MOTION TO  
SUPPRESS**

I. FACTS

Mr. Hinds prior to being arrested on November 23, 2019, came in contact with Detroit Police Offices Harnphanich and Bush. The reason Detroit Police Offices Harnphanich and Buch came in contact with Mr. Hinds is because the officers notices his vehicle was filed with smoke. The Detroit Police Offices were investigating whether the occupants were illegally smoking marihuana in public. During their investigation the officers determined that the smoke in Mr. Hinds vehicle was tobacco smoke and not marihuana smoke. That Mr. Hinds had a license to use medical marihuana. That Mr. Hinds was in possession of less than

2.5 ounces of marihuana. That the DPD officers observed Mr. Hinds in possession of less than 5 grams of marihuana. That the DPD offices did not observe or smell any burnt marihuana in Mr. Hinds' vehicle. From the DPD offices initial observations there was no evidence that Mr. Hinds was not in "clear and uncontroverted" compliance with the Michigan Medical Marihuana Act (MMMA.)

## II. ARGUMENT

The leading case suggest in dicta that "clear and uncontroverted" evidence of MMMA compliance could preclude a finding of probable cause based on marijuana possession. See *id.*; United States v. Duval, 742 F.3d 246, 252 (6th Cir. 2014). The dicta relied upon in the Duval case is based upon the Michigan Court of Appeals case, People v. Brown, 297 Mich. App. 670, 825 N.W.2d 91 (Mich. Ct. App. 2012) which states "while we decline, in light of the pertinent case law, to impose an affirmative duty on the police to obtain information pertaining to a person's noncompliance with the MMMA before seeking a search warrant for marijuana, if the police do have **clear and uncontroverted evidence** that a person is in full compliance with the MMMA, this evidence must be included as part of the affidavit because such a situation would not justify the issuance of a warrant. This scheme will reduce any potential (however unlikely) for police overreach in attempting to obtain search warrants."

In this case, there was never a finding by the court of whether there was “clear and uncontroverted” evidence that Mr. Hinds was in compliance with the MMMA. In its order (Re:38) the court does indicate that the “The Court finds the MMMA: (1) only protects patients who comply with it; (2) only protects patients as outlined in the statute;” but does not disclose whether Mr. Hinds was in compliance with the MMMA and if he was in compliance what protections he would be entitled to. It appears that if Mr. Hinds was in “clear and uncontroverted” compliance, that the DPD officers would not have sufficient probable cause to search his vehicle.

### III. CONCLUSION

For the foregoing reasons, and any other reasons the Court finds just and proper, Mr. Hinds requests that the Court reconsider its order (RE:38) and grant Mr. Hinds’s motion to suppress.

Dated: January 13, 2020

Respectfully submitted

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CERTIFICATE OF  
SERVICE

I hereby certify that on the above date, the foregoing paper was filed with the clerk of the Court via ECF and served on all counsel of record.

Dated: January 13, 2020

/s/Christopher W. Quinn, II  
Attorney for Michael Hinds